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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,227	04/13/2005	Christophe Arnaud	0505-1046	4671
466	7590	10/07/2008	EXAMINER	
YOUNG & THOMPSON			METZMAIER, DANIEL S	
209 Madison Street				
Suite 500			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			1796	
			MAIL DATE	DELIVERY MODE
			10/07/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/531,227	ARNAUD, CHRISTOPHE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel S. Metzmaier	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 4/13/2005 & 6/23/2008.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) 10-19 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 13 April 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 4/13/2005.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 1-19 are pending.

### ***Election/Restrictions***

1. Applicant's election with traverse of the restriction and election of species to the invention of Group I , claims 1-9, and the species (1), Vibration by excitation of a mechanical type, in the reply filed on 23 June 2008 is acknowledged. The traversal is on the ground(s) that the inventions are sufficiently interrelated that they should be examined together and applicants assert the prior art cited by the examiner is non-analogous art based on applicants amendment. Applicants have limited the claims to amend the claims around the prior art cited by the examiner. This fact alone is the epitome that the inventions do not relate to a single inventive concept as required by the PCT Rules for unity of invention.

Applicants' arguments have not found persuasive because since the apparatus may be employed in atomizing rather than the separate function of an apparatus for emulsification. The species election has been collapsed.

The requirement is still deemed proper and is therefore made FINAL.

### ***Priority***

2. Receipt is acknowledged of papers received in this national stage application from the International Bureau (PCT Rule 17.2(a)), submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite since the "at least two liquids considered to be immiscible" is indefinite since it is unclear who considers said liquids immiscible. The remaining claims are included in this rejection since dependent claims incorporate all the limitations of the claims that they depend and do not correct this issue.

The phrase "vibrate by excitation of a mechanical, electrical or magnetic type" renders the claims indefinite since it is unclear whether the vibrations are derived from a mechanical, electrical or magnetic device or apparatus or based on an atomic or quantum level.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakashima et al, US 5,326,484. Nakashima et al (abstract, figures 4 and 5; column 1, lines 62 et seq; column 6, lines 33 et seq, particularly column 7, lines 1 et seq; column 7, lines 50 et seq; column 8, lines 54 et seq; column 9, lines 30-35; examples and claims) discloses methods of emulsification employing concentric tubes, wherein the inner tube is porous. The apparatus is connected to mechanical devices including gas pressure devices and a pump. Furthermore, Nakashima et al (column 9, lines 30-35) discloses the emulsions formed may have use in pharmaceuticals and cosmetics.

At least the mechanical vibration type would have been inherent to employing the Nakashima et al devices as disclosed therein for making emulsions.

To the extent the Nakashima et al differs from the claims in the sufficiency of the disclosed methods of making the emulsions, it would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to combine like soluble materials for ease of mixing and/or vary the order of mixing the ingredients based on the desired internal or external phase noted in the Nakashima et al reference and conventional in the art.

#### ***Allowable Subject Matter***

8. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Daniel S. Metzmaier/  
Primary Examiner, Art Unit 1796**

DSM